



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 5301-00
31 January 2001

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 January 2001. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps on 3 April 1979 at the age of 18. Your record reflects that on 6 December 1979 you received nonjudicial punishment (NJP) for failure to go to your appointed place of duty and were awarded suspended forfeitures totalling \$400.

Your record further reflects that during the period from 1 to 21 December 1981 you were in the custody of civil authorities for approximately 12 days. On 17 December 1981, while in the custody of civil authorities, you submitted a written request for an undesirable discharge to avoid trial by court-martial for possession of marijuana and drug paraphernalia. Subsequently, this request was denied and on 13 April 1982 you were convicted by general court-martial (GCM) of possession of three pounds of marijuana and possession of drug paraphernalia. You were sentenced to forfeiture of all pay and allowances, confinement at hard labor for a 12 months, reduction to paygrade E-1, and a bad conduct discharge (BCD). The BCD was approved at all levels of review and ordered executed. On 4 January 1985 you received a BCD.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, and your contention that you were a victim of double-jeopardy because you were charged by civil and military authorities for the same offenses. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the serious nature of your drug related misconduct. Further, your contention of double-jeopardy is without merit. First, there is no evidence in the record, and you submitted none, to show that you were convicted by the civil authorities of the same misconduct which resulted in your court-martial conviction. Even if you were, the prohibition against double-jeopardy does not apply if a state court convicts an individual of certain offenses and a federal court, such as a court-martial, convicts the individual of the same offenses. Given all the circumstances of your case, the Board concluded your discharge was proper as issued and no change is warranted. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director